

1 BILL NO. S-83-09-53

2 SPECIAL ORDINANCE NO. S-213-83

3 AN ORDINANCE approving a Contract  
4 by the City of Fort Wayne by and  
5 through its Board of Public Works  
6 and L. W. Dailey, Inc., for Res.  
#5969-83, Ellen Avenue, pavement  
and curb repair.

7 NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL  
8 OF THE CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. The annexed Contract, made a part hereof,  
10 by the City of Fort Wayne by and through its Board of Public  
11 Works and L. W. Dailey, Inc., for Res. #5969-83, Ellen Avenue,  
12 pavement & curb repair, is hereby ratified, and affirmed and  
13 approved in all respects. The work under said Contract requires:

14 pavement and curb repair on Ellen Avenue  
15 from the east property line of Lakeview  
16 Drive to the west property line of Sprunger  
Avenue;

17 the Contract price is Fifty-Four Thousand Five Hundred Thirty-  
18 One and 75/100 Dollars (\$54,531.75).

19 SECTION 2. Prior Approval was received from Council  
20 with respect to this Contract on August 23, 1983. Two (2) copies  
21 of the Contract attached hereto are on file with the City Clerk,  
22 and are available for public inspection.

23 SECTION 3. That this Ordinance shall be in full force  
24 and effect from and after its passage and any and all necessary  
25 approval by the Mayor.

26  
27 Samuel J. Talarico  
Councilmember

28 APPROVED AS TO FORM  
29 AND LEGALITY

30  
31 Bruce O. Boxberger, City Attorney  
32

Read the first time in full and on motion by Talarico, seconded by Jim Davis, and duly adopted, read the second time by title and referred to the Committee Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 9-27-83

Sandra E. Kennedy  
CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Jim Davis, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 10-11-83

Sandra E. Kennedy  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. J-213-83 on the 11th day of October, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy  
CITY CLERK

Ray A. E. Clark  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of October, 1983, at the hour of 11:30 o'clock 4 M., E.S.T.

Sandra E. Kennedy  
CITY CLERK

Approved and signed by me this 18th day of October, 1983, at the hour of 3 o'clock P M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

73-178-17  
9/14/83

Common Excavation	Five dollars and fifty cents per cubic yard	5.50
Concrete Removal	Five dollars and fifty cents per square yard	5.50
Curb Removal	Two dollars and no cents per lineal foot	2.00
8" Truss Pipe in Place	Fourteen dollars and no cents per lineal foot	14.00
Type I-C Inlet Incl. Casting	Five hundred dollars and no cents per each	500.00
12" Class IV Pipe	Fifteen dollars and fifty cents per lineal foot	15.50
6" Plastic Sub-Surface Drainage Pipe in Place	Five dollars and no cents per lineal foot	5.00
6" Concrete Pavement	Fifteen dollars and seventy-five cents per square yard	15.75
6" x 6" Concrete Curb Type II-A	One dollar and fifty cents per lineal foot	1.50
6" Concrete Drive	Seventeen dollars and fifty cents per square yard	17.50
Adjust Casting	Fifty dollars and no cents per each	50.00
New Casting Type "C"	Two hundred dollars and no cents per each	200.00

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5969-83 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally \* See Liquidated Damages Provision.

and in all respects completed on or before \*Oct. 15, 1983 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said

Date \_\_\_\_\_, 19\_\_\_\_ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 14th

day of September, 1983

ATTEST:

Lorraine L. Casper  
Corporate Secretary

L. W. DAILEY, INC.

BY: [Signature]

ITS: [Signature]

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

[Signature]  
[Signature]  
[Signature]

Its Board of Public Works and Mayor.

ATTEST:

Alex V. Goshenow  
Secretary and Clerk

Contract for  
Improvement Resolution No. 5969-83  
Continued

Backfill for Seed	Four dollars and no cents per ton	4.00
Seed, Mulch, & Fertilizer	No dollars and forty cents per square yard	0.40
5 D H.A.C.	Twenty-five dollars and no cents per ton	25.00
A-2 H.A.C.	Thirty dollars and no cents per ton	30.00
Total	Fifty-five thousand, two hundred and ten dollars and fifty cents	\$55,210.50

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

## PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we L. W. DAILEY, INC.

as Principal, and the St. Paul Fire and Marine Insurance Company

\_\_\_\_\_, a corporation organized under the laws of the  
State of Minnesota, and duly authorized to transact business in the  
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,  
Indiana, an Indiana Municipal Corporation in the sum of FIFTY-FIVE THOUSAND,  
TWO HUNDRED AND TEN DOLLARS AND FIFTY CENTS -----

( \$ 55,210.50----- ), for the payment whereof well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The condition of the above obligation is such that

WHEREAS, the Principal did on the 14<sup>th</sup> day of September, 1983, enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5969-83

To improve Ellen Avenue from the east property line of Lakeview Drive to the west property line of Sprunger Avenue.

at a cost of \$ 55,210.50-----, according to certain plans and specifications prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

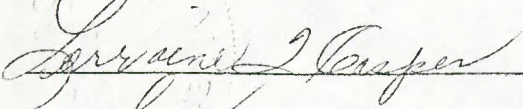
NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

L. W. DAILEY, INC.  
(Contractor)

BY: 

ITS: 

ATTEST:

  
(Title)

ST. PAUL FIRE & MARINE INSURANCE COMPANY  
Surety

\*BY: 

Authorized Agent  
(Attorney-in-Fact)

\*If signed by an agent, power of attorney must be attached

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- L. W. DAILEY, INC. -----

(Name of Contractor)

----- 1122 THOMAS ROAD, FORT WAYNE, INDIANA 46804 -----

(Address)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

and St. Paul Fire and Marine Insurance Company  
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of FIFTY-FIVE THOUSAND, TWO HUNDRED AND TEN DOLLARS AND FIFTY CENTS -----

for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 14<sup>th</sup> day of September, 1983, for the construction of:

Improvement Resolution No. 5969-83

To improve Ellen Avenue from the east property line of Lakeview Drive to the west property line of Sprunger Avenue.

at a cost of FIFTY-FIVE THOUSAND, TWO HUNDRED AND TEN DOLLARS AND FIFTY CENTS :  
-----

(\$ 55,210.50-----), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subconstructor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-  
(number)  
parts, each one of which shall be deemed an original, this 14<sup>th</sup> day of  
September, 1983.

(SEAL)

ATTEST:

Lorraine J. Casper  
(Principal) Secretary

L. W. DAILEY, INC.  
Principal

BY [Signature]  
(Title)

(Address)

Witness as to Principal

(Address)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY  
Surety  
BY [Signature]  
Attorney-in-Fact  
(Authorized Agent)

Barbara A. Hunter  
Witness as to Surety

201 West Wayne Street  
(Address)

Fort Wayne, Indiana 46802

201 West Wayne Street  
(Address)

Fort Wayne, Indiana 46802

NOTE: Date of Bond must not be prior to date of Contract.  
If Contractor is Partnership, all partners should execute bond.

BILL NO. S-83-09-53

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN  
ORDINANCE approving a Contract by the City of Fort Wayne by and  
through its Board of Public Works and L.W. Dailey, Inc., for Res.  
#5969-83, Ellen Avenue, pavement and curb repair

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

SAMUEL J. TALARICO, CHAIRMAN

*Samuel J. Talarico*

VICTURE L. SCRUGGS, VICE CHAIRMAN

*Victure Scruggs*

MARK E. GIAQUINTA

*Mark E. Giaquinta*

PAUL M. BURNS

*Paul M. Burns*

ROY J. SCHOMBURG

*Roy J. Schomburg*

*Concurred 10-11-83*

*Sandra E. Kennedy*

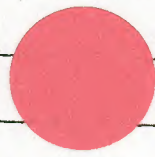
TITLE OF ORDINANCE Contract for Res. 5969-83, Ellen Avenue, pavement & curb repair

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

1-83-09-53

SYNOPSIS OF ORDINANCE This Contract for Res. 5969-83, Ellen Avenue, is for pavement and curb repair on Ellen Avenue from the east property line of Lakeview Drive to the west property line of Sprunger Avenue. L. W. Dailey, Inc. is the contractor.

PRIOR APPROVAL RECEIVED 8/23/83



EFFECT OF PASSAGE Improvement of above area.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$54,531.75

ASSIGNED TO COMMITTEE